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Paper No. 10

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**OFFICE OF PETITIONS
AND PATENTS**

In re Application of	:
Kurt W. Getreuer	: DECISION GRANTING
Application No. 08/485,070	: PETITION
Filed: June 7, 1995	:
Attorney Docket No. 37436, D-1	:

This is a decision on the petition filed July 31, 1996, requesting, in effect, that the above-identified application be accorded a filing date of June 7, 1995.

The application was deposited on June 7, 1995, as a divisional application under 37 CFR 1.60 based on prior application No. 08/420,899. However, the specification, including the claims, supplied in application No. 08/485,070 on June 7, 1995, was not a true copy of the specification as filed in prior application No. 08/420,899. Instead, the specification filed in this application on June 7, 1995, was a copy of the specification filed in application No. 08/420,380. In addition, the copy of the drawings containing Figures 1-121 originally filed in prior application No. 08/420,899 were omitted on June 7, 1995.

On July 31, 1996, a copy of the 128 sheets of drawings originally filed in application No. 08/420,899 was supplied as "Exhibit O" attached to the present petition. The present petition acknowledges that the copy of the drawings required by 37 CFR 1.60(b) was omitted on June 7, 1995, but argues that the correct specification was filed in this application on June 7, 1995, with the correct application transmittal letter and that the specification filed on June 7, 1995, was placed in the file of application No. 08/485,896 as a result of a Patent and Trademark Office (Office) error. In support, petitioner refers to his

postcard receipt as acknowledging receipt of 226 pages of specification on June 7, 1995, in application No. 08/485,070.

The argument that the wrong specification was placed in the file of the present application as a result of an Office error is not persuasive. The application transmittal letter and the specification which were originally stamped with application No. 08/485,070 show the same "Office Date" stamp with the notations "Exp" and the number "15", indicating that all of the papers were received and stamped at the same time by the same Office employee when the Express Mail package bearing label No. TB75671045XUS was opened in the Office. Applicant is reminded that the application papers for the present application and the application papers for application No. 08/485,896 were received in separate Express Mail packages.

As to applicant's postcard receipt, it does not conclusively establish which specification was received as application No. 08/485,070. It indicates that at least 226 pages of specification and 5 pages of claims was filed on June 7, 1995. The specification stamped with application No. 08/485,070 includes 227 pages of specification (i.e., at least 226 pages) and 5 pages of claims.

However, since it is now clear that a copy of the specification originally filed in prior application No. 08/420,899 was filed in the Office on June 7, 1995, albeit in the wrong application, on petition under 37 CFR 1.182, the Office may correct the file of the present Rule 60 application by removing the specification filed on June 7, 1995, from the file of this application and replacing the specification, including the claims, with the specification filed on June 7, 1995, in application No. 08/485,896.

The application transmittal letter filed in application No. 08/485,070 on June 7, 1995, has also been returned to application No. 08/485,070 where it properly belongs.

On petition, the delay in supplying the true copy of the drawings originally filed in the prior application will be excused.

The petition to accord the application a filing date of June 7, 1995, is granted to the extent indicated above.

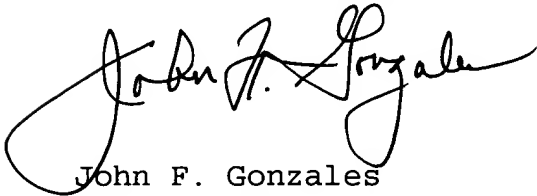
The application will be processed and examined using the 128 sheets of drawings containing Figures 1-121 supplied on July 31, 1996.

The application is being forwarded to the Office of Finance for charging the \$130.00 petition fee to deposit account No. 04-1175, as authorized in the application transmittal letter.

Thereafter, the application will be returned to Application Processing Division with a filing date of June 7, 1995, for correction of the file wrapper label to show that the present application is a divisional application of application No. 08/420,899, not application No. 08/420,380, and that 128 sheets of drawings were present on filing.

The application will then be returned to Examining group 2500 for examination in due course.

Telephone inquiries related to this decision should be addressed to the undersigned at (703) 305-9282.

A handwritten signature in cursive script, reading "John F. Gonzales".

John F. Gonzales
Senior Legal Advisor
Special Program Law Office
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for Patent Policy and Projects

JFG